

1969

## Volume 05 (Part 1 of 3)

Cuyahoga County Court of Common Pleas

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THE STATE OF OHIO, )  
 )  
 ) SS:  
COUNTY OF CUYAHOGA. )

12  
WEDNESDAY SESSION  
APRIL 23, 1969  
McMONAGLE, J.

IN THE COURT OF COMMON PLEAS  
(Criminal Branch)

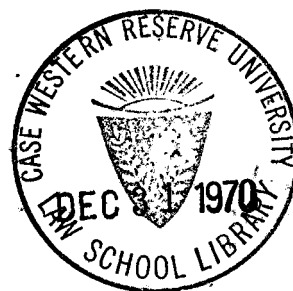
THE STATE OF OHIO, )  
 )  
Plaintiff )  
 )  
vs. )  
 )  
FRED AHMED EVANS, )  
 )  
Defendant )

No. 90,257

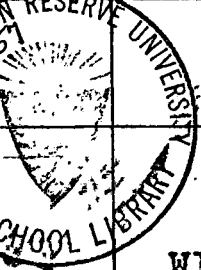
WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
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(See inside page.)

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I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECR</u>
James O'Malley	(Continued)	2032	2033	
Victor Kovacic	(Continued)	2035	2042	2054
John Sweeney	2057 (Recalled)	2075 2173	2174	2179
Thomas E. Horgan	2108	2154	2171	
William McMillin	2210	2231	2250 2254	2252 2262
Kenneth Gibbons	2264	2290		

- - -

MOTIONS:

PAGE

Motion to Suppress Identification: 2185

WITNESS:

William H. McMillin 2190

Ruling of the Court - Motion Denied: 2208

- - -

WEDNESDAY MORNING SESSION, APRIL 23, 1969 9:25 A.M.

THE COURT: Good morning, folks;  
be seated.

THEREUPON, JAMES O'MALLEY, having been  
previously duly sworn, resumed the stand and  
testified further as follows:

MR. TOLLIVER: Judge, our next  
order of business was to obtain the statement  
of this witness that was submitted; the Prosecutor  
was to bring it.

THE COURT: Mr. Laurie said  
he had it downstairs.

MR. LAURIE: I believe the  
witness has it, Judge.

(Witness handed counsel a document.)

CROSS - EXAMINATION (CONTINUED)

BY MR. TOLLIVER:

Q Officer, is this the only written statement that you  
made?

A Yes, sir.

Q You have made none other?

A No, sir.

Q Than the one you brought with you today?



A Yes, sir.

MR. TOLLIVER: Nothing further,  
Judge.

MR. CORRIGAN: Would you please  
mark this for identification?

(State's Exhibit 200  
marked for identification.)

REDIRECT EXAMINATION

BY MR. CORRIGAN:

Q Officer, I hand you what has been marked for purposes of identification as State's Exhibit 200. I ask you whether or not you can identify that?

A Yes, I can.

Q Will you tell the Court and jury what that is?

A That is a departmental Form 1 report, departmental information, which I made on the 25th of July, 1968.

Q This is your report relative to that which you have testified to here earlier, sir?

A Yes, sir.

MR. CORRIGAN: We offer into  
evidence State's Exhibit 200, your Honor.

MR. TOLLIVER: Objection.

MR. FLEMING: The best evidence  
is the testimony, your Honor.

THE COURT:

It will be refused.

(State's Exhibit 200  
rejected.)

MR. CORRIGAN:

May I have the  
court stenographer incorporate this exhibit into  
the record?

THE COURT:

You may in accordance  
with the matters that we discussed before, have a  
photostat attached.

MR. CORRIGAN:

Nothing further of  
this witness.

MR. TOLLIVER:

We have finished.

(Witness excused.)

MR. LAURIE:

We had a witness  
on the stand before this man. Do you want to  
bring him back?

Detective Kovacic.

- - -

THEREUPON, VICTOR KOVACIC, having been previously duly sworn, resumed the stand and testified further as follows:-----

CROSS-EXAMINATION (CONTINUED)

BY MR. FLEMING:

Q Officer, these are your reports. Now, Officer, I believe you told us yesterday that these pellets that were taken from the victims other than police officers are situated now in the Scientific Identification Unit, is that correct?

A Yes, sir.

Q Now, I believe you indicated that there was a continuing investigation in this matter to determine what this defendant and the others that are named in this indictment have done with regard to their activities on July 23, 1968, is that correct?"

A That's correct.

Q And it is my understanding that the physical evidence that you, as part of your investigation, determined with regard to State's Exhibit 190, was determined on the 18th of April of this year, is that correct?

A Yes, sir.

Q And is it my understanding that prior to the 18th of April, 1969, you obtained in your Scientific Investigation

no physical evidence to connect to that weapon?

MR. LAURIE:

Objection.

THE COURT:

I'm going to

sustain the objection

Q (By Mr. Fleming) All right, prior to the 18th of April of this year, you made a number of scientific evaluations of this exhibit, 190, isn't that correct?

A Yes.

Q The purpose of those examinations was to connect some physical evidence to this weapon, wasn't it?

A That is right.

Q Now, prior to the 18th of April, 1969, did you connect any physical evidence to this weapon?

A Not positively.

Q All right, now, I believe you told us in test-firing this weapon, that you fired in a barrel with some cotton, which is the usual method, is that correct?

A Yes.

Q Then you took it to the lake and made a number of test shots under those conditions?

A Yes.

Q Now, the reason for this, I believe you indicated, was because of the power of this weapon?

A Yes.

Q What is the trigger pull of this weapon, how many

pounds?

A I don't know.

Q Well, the cards that you used yesterday, would they reflect the trigger pull of this weapon?

A No, sir.

Q When you tested this weapon, did you make an effort to determine what the trigger pull was?

A No, sir.

Q Now, you have equipment in the Scientific Identification Unit to make a determination as to the trigger pull of that weapon, don't you?

A Yes, sir.

Q Now, will you tell us exactly what you did when you tested this weapon in the barrel?

A I placed a round in the chamber and prepared the cotton waste and placed several papers and texts on the bottom, hoping to stop the pellet once it was fired; and at that time I fired one into the cotton, it went all the way through the cotton and through several of the texts, including a telephone book at the bottom.

Q Were you able to extract a pellet so you could look at it for striations and lands and grooves?

A Yes.

Q So you did obtain a pellet upon which you could conduct tests, is that correct?

A A very poor pellet, sir.

Q Yes. How many did you fire into the barrel?

A One or two, I believe two.

Q And from any of those pellets that you fired into the barrel, were you able to conduct any tests upon which a comparison was made?

A Not satisfactorily, no.

Q Now, will you tell us when it was that you went to the lake?

A Within the same day or the next day, or during the night.

Q That was in July of 1968?

A That's correct.

Q All right, now, who went with you when you went to the lake?

A Captain Poelking.

Q Anybody else?

A Yes. Quite a few officers were present, but I can't recall all of them.

Q Now, will you tell the jury the kind of test that you conducted at the lake?

A Well, we have a screen recovery that is lowered into the water, about 5 or 6 feet down; then one of the officers, myself in this instance, fires the weapon straight down into the water.

And when the entire force is utilized, it tumbles down and falls into the screen. The screen is pulled up and the pellet is removed.

Q Did you recover all of the pellets that you fired into the water?

A Yes, sir.

Q These were the pellets upon which you conducted your tests, to make comparisons?

A Yes.

Q In other words, you didn't use the pellets that had been fired into the barrel at all?

A No.

Q And the way you make these tests, or the manner in which you conduct them is to compare the striations and lands and grooves of the weapon and the pellets; isn't that correct?

A That's correct.

Q Did these particular pellets that you propelled into the lake, did they go through any wood or metal?

A No.

Q In your test?

A No, sir.

Q Now, after you obtained the photographs, referring to -- or the board that was taken from the station wagon, or ambulance number 591, were you told by the police who brought it in that this bullet had been propelled through metal and into wood? Were you told that?

A I wasn't told; I assumed that.

Q And, as a matter of fact, you went to the scene where the ambulance was, just last Friday, and observed the ambulance and observed that this particular pellet came through the metal part of the ambulance and then imbedded itself in the wooden part of the seat?

Isn't that the fact?

A Yes, sir.

Q Now, after you observed this, did you make any further tests with this weapon for striations, lands and



grooves?

A With the weapon?

Q Yes.

A No, sir, not with the weapon.

Q The pellets that you used, the pellets that you used in your testing and firing in the water, are those the pellets that you used to make this positive determination?

A Yes.

Q Did you make any further tests -- did you make any further examination of this weapon?

A Of the weapon itself?

Q Yes.

A No, sir.

Q Only the test pellet?

A Only the test pellet that was fired during July and at one other time when the defense expert assisted us.

Q And now, did Mr. McDonald, the man you referred to as a defense expert, did you ever show him any of the evidence that you have testified to with regard to this pellet imbedded in car 951?

A No, sir.

Q Did you ever show him that pellet?

A No, sir.

MR. FLEMING: No further questions. You may inquire.

REDIRECT EXAMINATION

BY MR. LAURIE:

Q We will take up the last question Mr. Fleming asked you, was Mr. McDonald present at any time from the date you received that pellet, throughout the entire time, up to today?

A No, sir.

Q Mr. Fleming asked you when you fired State's Exhibit 190, which was testified to as being the exhibit that Mr. Heckman sold this defendant, in a barrel with cotton in it. Did I understand your testimony on cross-examination was that it was so mutilated that you couldn't use it?

A It was not satisfactory; it was bent up.

Q And is this the reason why you went to the water?

A Yes.

Q Because of the power of this gun, it was mutilated?

A That's correct.

Q Then, Mr. Fleming asked you if you made any other examinations of this gun, 190, that was sold to the defendant other than the one apparently you made in the month of -- what was it -- April -- when did you make the examination of the pellet given to you by --

A In April.

Q You said not positively. What do you mean by that?

MR. FLEMING:

Objection.

THE COURT:

I didn't understand

him testifying to that, that he did anything with the gun itself after --

MR. LAURIE:

You said -- he

asked you whether you made any other examinations relative to this gun, other than the one you made in April, and you said, I believe your answer was something to the effect that you weren't -- I will withdraw that -- something to the effect that you were working on it..

MR. FLEMING:

Objection.

MR. TOLLIVER:

He didn't say that.

THE COURT:

The objection is sustained he said he continued the investigation.

Q (By Mr. Laurie) Did you make any other tests, other than the one in April on this gun, examinations?

A No other tests.

Q Well, on cross-examination, you referred to this gun as to whether you worked with this gun other than in April -- did you work with this gun other than this April?

A Yes, I worked before April, but not in April.

Q But before April you did something else with this gun, is that right?

A Yes.

Q What did you do with it?

A I test-fired the weapon.

Q Did you make any examination -- were other exhibits given to you with that test shot?

A Yes.

Q Are you still examining those exhibits that were submitted to you with a test shot of this weapon?

A Yes.

Q All right, now when Mr. Fleming asked you about whether you gave Mr. McDonald something you did in April, did you show Mr. McDonald something you were working on with this gun prior to April?

MR. FLEMING:

Objection.

THE COURT:

Do you understand

his question?

THE WITNESS:

Yes.

THE COURT:

All right, overruled.

THE WITNESS:

Yes, I did.

THE COURT:

The question is,

what did you show Mr. McDonald?

MR. LAURIE:

Did you show him some exhibits that you had worked with, with this gun?

THE WITNESS:

Yes.

Q (By Mr. Laurie) And did you have some conversation

with him as to the ballistics of these items you showed him?

A Yes.

Q Earlier in your cross-examination, Mr. Fleming asked you, if you recalled, yesterday I believe, whether any of your associates were in disagreement with what your findings were, and you said no.

Do you remember that?

A Yes.

Q Was Mr. McDonald, the defense expert in disagreement with any of your findings?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q (By Mr. Laurie) You did, however, discuss with him and go over with him some of these exhibits when he was here, is that right, sir?

A Yes.

Q Now, incidentally, before I go into some more questioning, I noticed that the defense attorney, Mr. Fleming, handed you back all your reports.

Now I want you to note for the record, in the event this may come up again, there are some numerical numbers written in ink on the top of each and all of these cards. I want the record to reflect that in the presence of Mr. Fleming that I inserted those numerical numbers, in numerical order, for the purpose of the record, what I had

given him last night to take home overnight to review, and you will understand it, will you, sir?

A Yes.

MR. FLEMING: Thank you, Mr. Laurie.

Q (By Mr. Laurie) Yesterday, on cross-examination, Mr. Fleming asked you a question on Page 1982, incidentally, of the record:

"Question: Now, Officer, there was some testimony with regard to number 6 buckshot found, taken from Officer Golonka, or his clothing and his body.

"Answer: Yes.

"Question: Now, were you able to ascertain and conclude as an opinion that that buckshot came from any of these weapons (indicating)?"

I believe he lifted the gun up.

"Answer: Positively?

"Question: Yes.

"Answer: Not positively, no, sir."

The next question on Page 1983 says:

"Question: In other words, all you can tell the Court and jury is that the buckshot is number 6 buckshot and that that buckshot could have been emitted from one of these weapons? Isn't that correct?

"Answer: Yes."

Now in line with this subject matter, Officer, would

you correlate a match of a buckshot fatal wound with a gunshot fatal wound? First, describe to the jury, as you indicated on cross-examination this morning to Mr. Fleming, what the factors you look for on a gunshot fatal wound match when you are examining the pellet.

MR. FLEMING:

Objection.

MR. TOLLIVER:

Objection.

THE COURT:

Is that a matter

normally for a doctor or a Coroner?

MR. LAURIE:

No, lands and

grooves, I believe it is for a ballistics expert.

THE COURT:

I thought you

said effect on the wound?

MR. FLEMING:

That is what he

said.

THE COURT:

Put another ques-

tion; we will consider this as being withdrawn.

Q (By Mr. Laurie) Can you explain what you looked for to make a match when a gunshot bullet has been given to you, as opposed to a buckshot pellet?

Explain that, and then I will go into the buckshot.

A When a pellet is removed from a body, we look for the lands and grooves and the microengravure or striations that are imparted on the pellet as it passes down the barrel and spins through the rifling, as opposed to the smooth bore of a shotgun whereby the pellets traveling down the bore, it is a smooth bore, and do not pick up any type of rifling.

Therefore, the size of the pellet and the weight is what we use for determining factors in shooting.

Q Then how close can you come to a match in buckshot, in a situation where you are comparing buckshot, as opposed--

MR. FLEMING:

Objection.

Q (By Mr. Laurie) -- opposed to a pellet coming from a 22- or 30-caliber, whatever?

MR. FLEMING:

Objection.

THE COURT:

Can you really

identify a buckshot pellet, in itself, in the same manner that you identify a pellet that came from a rifle?

THE WITNESS:

Only as to the

size of the shot.



THE COURT:

Only as to the size,

no striations or lands and grooves in the buckshot pellet?

THE WITNESS:

No, it cannot be

done.

Q (By Mr. Laurie) Will you again, then, for clarity's sake, keeping in mind State's Exhibit 2 which was testified as being buckshot removed from the body of Mr. Golonka, Patrolman Golonka, and State's Exhibits 38 and 39 which were testified to as being the cartridges of buckshot removed from the body or the person of Lathan Donald, and what you then found?

MR. FLEMING:

Objection.

THE COURT:

Well, hasn't he already answered it, Mr. Laurie?

MR. LAURIE:

There was some question on cross-examination that leaves something yet to be desired, and I would like for him to wind it up if he can.

THE COURT:

All right, proceed.

A The shotgun, the 410 shotgun loads were four and six, from the person of Lathan Donald, numbers 4 and 6 shot, and that would be, number 6 shot would be consistent with what was found in the body of Patrolman Golonka, in size and in weight.

Q Could you, as a ballistics expert, go any further than this in that type of a comparison test?

MR. FLEMING: Objection.

THE COURT: Overruled.

A It cannot be done.

Q (By Mr. Laurie) All right, now, going back to State's Exhibit 190, which was identified as being the weapon that was sold from Heckman to Mr. Evans, the defendant in this case, the defense asked you this question, on page 1984:

"Question: Well, if you developed an opinion, do you consider that to be a positive opinion, that State's Exhibit 190 fired that shot?"

Your answer was: "Answer: To the exclusion of all others, yes, sir."

Can you amplify that answer?

MR. FLEMING: Objection.

THE COURT: Sustained.

MR. LAURIE: All right. May

I have a moment, Judge?

Q (By Mr. Laurie) Going back to page 1983, the defense counsel asked you this question:

"Question: Now, did you test any other weapons, other than State's Exhibit 90, when you made your examinations and conclusions, the 19th of April?"

MR. FLEMING:

What page is that?

MR. LAURIE:

1983.

THE COURT:

1,983.

MR. LAURIE:

The second question

from the top of the page, sir.

THE COURT:

He read it "90."

It may read "90," but the word was "190," wasn't it?

MR. LAURIE:

Exhibit 190.

Let me reread the question as I see it, on page 1983:

"Question: Now, did you test any other weapons, other than State's Exhibit 190, when you made your examinations and conclusions, on the 19th of April?"

Q (By Mr. Laurie) Then your answer was:

"Answer: Is 190 the number 5, the carbine?"

"Question: Yes, the weapon that we were just looking at.

"Answer: Yes."

"Question: What weapons were they?

"Answer: I also tested the M-2 carbine.

"Question: The M-2?"

Now, I ask you, Officer, when you answered, you made a test, what are you referring to in these questions and answers?

A By "test," I mean that I did not re-test-fire the weapon. What I did was test the pellets that were fired in July, not the weapon.

Q And Exhibit 190, the carbine, the M-1?

A Yes, sir.

Q What you refer to as "test," what type of test did you make?

A Test- firing, prior to April.

Q Yes, but in these answers, questions and answers, what type of test were you referring to?

A I am talking about a microscopic ballistic test at that time.

Q I see, then we take it that you referred to the test shot that you made before April, when you made these comparison tests, is that right?

A That's correct.

Q And then, do I take it, from your answers that you use your original test shots to make these comparison tests with, is that right, sir?

A Yes, sir.

Q Incidentally, when Mr. McDonald was out at the lake you said he went out to the lake with you?

MR. FLEMING: Objection.

THE COURT: He didn't say that.

Q (By Mr. Laurie) Did he go to the lake with you?

A Yes, he did.

Q Did he test-fire this weapon at that time?

A Yes.

Q And this was prior to April?

A Yes.

Q Tell me, sir, if your record reveals it, or if you recall, when was State's Exhibit 190 turned over to me for purposes of this case?

A April 12, 1969, 3:30 p.m., to Sergeant Joyce, who brought it over.

Q At any time after that was turned over to our office for this case, did you ever see or touch that weapon since?

A Not since yesterday.

MR. LAURIE:

Thank you.

RE-CROSS-EXAMINATION

BY MR. FLEMING:

Q When Mr. McDonald, the defense expert was here from New York, had you connected any of the evidence that had been given to you by the police or by the State to this weapon?

A Not positively.

Q When you went out to the lake and test-fired this gun, there was nothing positively to connect to this weapon, isn't that correct?

MR. LAURIE:

Objection.

THE COURT:

It is the same

question; sustained.

Q (By Mr. Fleming) All right, now, sir, I believe you told us that you test-fired this weapon into a barrel which had cotton in it and that you placed the wood and other things in it to stop the impact?

A No, sir, not wood.

Q What did you put in there?

A Telephone books.

Q Telephone books?

A Yes.

Q And you told us this weapon was fired into that barrel, and that after you obtained the pellet, that it was so damaged that you couldn't make a satisfactory comparison. That's your testimony, isn't it?

A It was not an ideal pellet.

Q Yes, and you couldn't -- I believe your testimony was that you could not make a satisfactory comparison, is that correct?

A It could have been possible.

Q Your testimony earlier this morning was that after you extracted this bullet from the barrel, you couldn't make a satisfactory comparison, that's what you said, isn't it?

A Yes.

Q Now, are you telling us that a bullet then fired from this gun through a metal truck, through two pieces of metal, the metal on the outside, the metal on the inside and then embedding itself in the wooden seat, contained in that truck, that that cartridge, that you made a satisfactory comparison from that shell?

A Positively.

MR. LAURIE:

Thank you, Officer.

THE COURT:

You are excused,

Sergeant.

(Witness excused.)

MR. LAURIE:

Patrolman Sweeney.



THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness JOHN SWEENEY, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORRIGAN:

Q Will you state your name, please, and spell your last name for the record?

A John Sweeney, S-w-e-e-n-e-y.

Q What is your occupation, sir?

A Patrolman, Cleveland Police Department.

Q How long have you been a member of the Cleveland Police Department?

A About four years.

Q Calling your attention, sir, to the date of July 23, 1968, were you employed as a member of the Cleveland Police Department on this date?

A Yes, I was.

Q Will you tell the Court and jury what time you came to work that day?

A 5:00 p.m.

Q Did you receive an assignment?

A Yes, we did.

Q And from whom?

A From Lieutenant Schempp, our immediate officer.

Q Tell the Court and jury what that assignment was.

A To take a stake-out at 123rd, 12312 Auburndale, and to observe the house for any activities of guns being taken in or out.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

Q (By Mr. Corrigan) And with whom were you so assigned?

A In our car, 961, Patrolman O'Malley and Patrolman Gallagher.

Q Do you know, sir, whether anybody else received a similar assignment?

A Yes, there was.

Q Who was this, sir?

A 966, with Patrolman Horrigan and Gerity.

Q Pursuant to that assignment, tell the Court and jury where you went and what you did?

A Left roll call about fifteen after 5:00, and we went out to the area and we parked our car on 124th Street just north of Auburndale.

Q Come down here, please, and make reference to this photographic map.

For the purpose of orientation, this is Lakeview and Auburndale, Beulah, East 124th, and Euclid is up here, and Superior is down here (counsel indicates).

Now, will you point out and tell the Court and jury where you went and what you did?

MR. LAURIE: Step back a little bit more, Sergeant, please.

A Directly in front of this car here was a white Cadillac, parked in front, and on the wrong side, facing north towards Superior, and we were parked here, facing Auburndale.

Q (By Mr. Corrigan) And what time of the day or night was this, sir?

A About 6:00 o'clock we arrived there.

Q And to where was your attention or surveillance directed?

A To the front of 12312 Auburndale.

Q Will you point out 12312 Auburndale?

A (Witness indicates.)

Q Now, will you tell the Court and jury what you observed when you first arrived there?

A Well, when we first arrived there, there were about ten or twelve colored males, dressed in Afro robes, milling around in front of the house.

Q And how long did you remain there?

A Remained there until about 6:55, when we left the area.

Q Before you left the area, did you recognize anybody

in that vicinity?

A Not at that time, no.

Q When you left the area, where did you go?

A We went to the Fifth District Headquarters.

Q And how long was it before you returned?

A We returned about 7:10.

Q And where did you go when you returned at 7:10?

A To the same area, the same position.

Q Again, you took up surveillance at the same area?

A Yes.

Q Tell the Court and jury what observations you made on this occasion?

A When we returned, there was about the same amount of people milling around. We were taking down license numbers of cars which stopped at the address in the vicinity, that approached the area more than once.

We observed about, I would say, a little after we arrived back, a red Volkswagon pull up in front of the house, and Fred Evans got out of the car and went into the house.

Q Prior to receiving this assignment, did you know or did anybody inform you as to the names of anybody relating to 12312 Auburndale?

A No, sir, I had no knowledge.

Q And you say you saw a man by the name of Fred Evans?

A Right.

Q Get out of this automobile?

A Right.

Q Do you see that man in this courtroom?

A Yes.

Q Point him out.

A (Witness indicates.)

Q One, two, or three?

A The third one back.

Q The third gentleman?

MR. LAURIE:  
the identification?

May the record show

THE COURT:

It may so show.

Proceed.

MR. CORRIGAN:

Yes, sir.

Q (By Mr. Corrigan) Did you know Mr. Evans before that date?

A Yes, I did.

Q Did you say, sir, that part of your assignment was to list license numbers of automobiles?

A Yes.

Q Did you do that, in fact, sir?

A Yes, we did.

Q And do you recall the listing of any of the license numbers that you recorded on that occasion?

A Yes, I do.

Q And will you tell the Court and jury what listings you can recall?

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Overruled.

He may answer.

A One was AD 5979.

Q (By Mr. Corrigan) Did you determine to whom that was listed?

A Yes, we did.

Q And to whom did you determine that to be listed?

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A Fred Evans.

Q (By Mr. Corrigan) Now, sir --

MR. FLEMING: I didn't hear that.

THE COURT: He said Fred Evans.

Q (By Mr. Corrigan) If you are able, will you fix the time, approximately, that you saw Fred Evans arrive?

A I would say about 7:15 -- I'm sorry -- about 8:15.

Q 8:15, and then what next did you observe?

A After he arrived and went into the house, about two or three minutes after that, three males left the house and got into a Pontiac.

Q Were you able to identify those three males?

A Out of the three, there was only one I recognized.

Q Who was that?

A George Forbes.

Q Who is George Forbes?

A He is a Councilman for the City of Cleveland.

Q What, if anything, did you see those three males do?

A They got into their car and they went past our position and went north on 124th, towards Superior.

Q You say they went past your position, did they drive by your automobile?

A Yes, they did.

Q Did you have any conversation with them or did they have any conversation with you?

A None at all.

Q After you saw these three males, one of whom you identified as George Forbes, leave the scene and drive past your car, how long was this in relation to the time that Ahmed Evans had arrived? How soon after his arrival?

A Not more than five minutes.

Q Then, what next did you observe after you saw these three gentlemen leave?

A Well, approximately, about a few minutes after that, one colored male came out of the house, stood in front of the house, directly in front of it on the sidewalk.

Q Describe him, what did he look like, what was his attire?

A He had Afro robe on, garb; he had a carbine in his hand, with ammunition -- with bandoleers around him.

Q And where did you see him?

A Directly in front of the house; he stood on the sidewalk in front of 12312 Auburndale.

Q What, if anything, did he do?

A A few minutes after that he started to move out into the street and across the street, directly across from it in front of a set of garages.

Q What, if anything, did he do there?

A He just stood there and looked towards us.

Q Then what did you observe after that?

A As soon as he crossed the street, about 15 to 17



colored males, dressed in various Afro garb, came out of the house, all armed.

Q And will you describe how they came out of the house, where they went and what they did?

A The came out of the house: they formed in front, and about the second one out of the house was Fred Evans. They started, some got into automobiles and some started moving out onto the street and some in a fashion crouched and were moving toward our car, down this way (indicating).

Q And what, if anything, did you then do?

A I then notified our office what the situation was.

Q How did you notify your office?

A On high-band radio.

Q And were you in contact with anybody else by way of that high-band radio?

A Yes, I was.

Q With whom?

A Car 966.

Q Do you know where car 966 was parked?

A Yes.

Q Will you point out where they were parked?

A Right on the corner of Lakeview and Moulton, here (indicating).

Q You notified your office relative to the observations you made up to that point?

A Right.

Q And what did you do after that?

A We were informed to leave the area.

Q What, in fact, did you do?

A We pulled out here and went down Auburndale, towards Euclid.

Q You indicated that about the second man out of the house, you identified as being Fred Evans?

A Right.

Q Were you able to identify anybody else?

A Not by face, but by clothing.

Q By clothing, will you tell the Court and jury what clothing you saw worn by people that came out of the house?

A The only outstanding feature was, there was a male dressed in a leopard skin sort of an Afro-type robe.

Q I see, and when you left the area, what direction did you take?

A We went up Auburndale, towards Euclid Avenue.

Q Incidentally, how many men in your car?

A Three, that night.

Q Did you use any mechanical contrivances to make these observations?

A Yes, a set of binoculars.

Q Who was driving the vehicle when you left that area?

A Patrolman Gallagher.

Q Did you make any further observations upon leaving the area?

A Yes, we did.

Q Will you tell the Court and jury what those were?

A We went up Auburndale (indicating) and we were about halfway from here to Euclid, when Patrolman O'Malley stated that we were being followed by a car.

I turned around, and when I turned around and looked out to see which car was following us, there was a male hanging out of the car with a gun, a rifle-type gun.

There was a shot fired, and I immediately fell down on the front of the seat and grabbed the high-band radio and informed the office which direction we were taking, and we were being fired upon; and I was attempting to get our shotgun out, which is mounted on the floor.

Q Were you able to determine the dress of this male individual that you saw in this automobile?

A No, I couldn't.

Q Were you able to determine the make or the kind of automobile?

A No, I just took a glimpse at it.

Q So that you proceeded then towards Euclid Avenue, and did you make any further observations relative to this automobile?

A Yes, I did. I got the shotgun out from the car, where it was mounted on the floor. I turned around, and the car was already just about completing its turn around in the middle of Auburndale.

Q What do you mean when you say it has just about completed its turn-around?

A I looked back and had the shotgun out of its position. The car was -- made a turn and was headed back down toward this area (indicating).

Q I see. Did you at any time fire a shot?

A Not then, no.

Q Was there any shot fired from your car?

A None at all.

Q You proceeded out to Euclid Avenue, and then where did you go?

A Made a right turn on Euclid Avenue, and at this time

996 was broadcasting that they were being shot at.

MR. TOLLIVER:

Objection.

THE COURT:

Overruled.

Q (By Mr. Corrigan) And where did you go?

A Come back down towards Lakeview. We turned onto Lakeview from Euclid.

Q Yes, sir?

A And I was attempting to locate 966's location.

We came back down Lakeview and we were going to come right back up to Auburndale and Lakeview, when 966 broadcast that they were at 108th and Superior.

We then turned down Ashbury.

Q Although not shown on the map, explain to the jury where Ashbury is located in relation to Lakeview and Euclid Avenue?

A It would be about here, about over here, about this distance here (indicating), I would say.

Q Ashbury would be at a comparable position on the map from Auburndale, as is Beulah? Is that correct? But to the south, towards Euclid Avenue?

A Yes.

Q So you came down Lakeview and then you turned west on Ashbury?

A Right. It would be a left turn off Lakeview.

Q Then, from Ashbury you went down to what street?

A Then we made -- we went down Ashbury, I believe it was 115th, and worked our way over to 108th and Superior.

Q You went to 108th and Superior?

A Yes.

Q Did you come back into this area again?

A Yes.

Q With whom?

A Sergeant White, Patrolman Gerity, and a Fourth District policeman, I never saw him before.

Q How did you come back into the area?

A In car 961, I was driving at the time, we came back the same way, back up to Euclid, and I took Euclid to Lakeview and drove up here (indicating), parked the car on the corner of Lakeview and Auburndale.

Q Now, will you tell us what you observed when you returned to Lakeview and Auburndale at that time?

A Got out of the car. I went to the corner, and directly around the corner, while in this position, there was a car that was disabled with two policemen wounded underneath it.

Q Did you determine who those two policemen were?

A One was Sergeant Levy, and the other one was Patrolman Ernest Rowell.

Q Then what did you do, sir?

A Then we attempted to try and pull these two to safety, pull them out of there to safety, but you look around the corner and there were other policemen laying on the sidewalk and in the street, further on down the street, and the rest of the night we was attempting to rescue anybody that was laying out there.

Q Did you determine who the other policemen were that were laying on the street or on the sidewalk?

A Yes, I did.

Q Who were they?

A One was Patrolman Wolff, Lieutenant Jones. There was a civilian there, too.

Q Did you determine who that civilian was?

A Not at the time, no.

Q Did you later learn who he was?

A Yes.

Q Who did you learn him to be?

A Mr. Chapman.

Q Did you do anything with respect to this civilian?

A Yes.

Q Will you tell the Court and jury what you did?

A Later on, in the night, we worked our way continuously down, bringing out any victims that were laying there; we got the two out of here (indicating) and formed more or less a human chain along the wall, to go

farther up; and at about right in here (indicating), I was up against the wall here, as they were coming upon bodies they were like bringing them back (indicating).

There was a colored male, wasn't a policeman, wasn't a civilian, and I picked him up and brought him over to the corner where he was put on the stretcher and taken to a hospital.

Q Was that James Chapman?

A Yes, I later learned that was James Chapman.

Q Did there come a time when you left that area?

A Yes.

Q Where did you go?

A We left the area and went back up to Euclid (indicating), and then there were reports coming over the radio of --

MR. TOLLIVER:

Objection.

THE COURT:

Overruled.

A -- of different snipers in different locations, and looting and so on, and took on another assignment.

Q (By Mr. Corrigan) Did you come back into the area?

A Not that night -- well, it was in the morning.

Q When you say it was in the morning, how early in the morning did you go back into the area?

A I didn't come back in; I left in the morning.



Q I see, did you at any time, may I ask, get down to the lower part of Lakeview, towards Beulah?

A We attempted to.

Q When you say "we attempted to", who do you mean?

A Well at one time we had heavy fire, when I arrived back on the scene here, we had heavy fire coming from this area (indicating).

On our high-band radio, the radio requested Sergeant White, who was our boss on the scene, they gave an address, which I don't recall, of a male who wants to give himself up to two colored policemen.

Q Yes, sir?

A They gave us this address, and I got a hold of our boss and we got a hold of one colored policeman. We attempted to come down to this address and we got in the vicinity of Lakeview, around in here (indicating), and were pinned down again by heavy sniper fire, and we never did make it.

Q Where were you pinned down?

A In this area, right in here (indicating).

Q You have reference to this area here, 1395 and 1391 are depicted here as burned-out or partially burned-out buildings.

Was it in that vicinity?

A It was right where the burned-out buildings were.

Q You were pinned down by fire when you were making an attempt to get someplace with a colored officer?

A Yes, we were making -- we had one colored officer and we were looking for another one.

Q And you never did get there?

A We never did get to the address, no.

Q Take the stand again, please. With reference, sir, to the police officers that you saw wounded, laying in the street, were you able to determine how they were dressed?

A In uniform.

Q They were dressed in uniform?

A Yes.

Q What were the lighting conditions at the time you observed these police officers laying in the street?

A Most of the lights were out.

Q What was the general climatic lighting condition, as distinguished from the street lights?

A It was dark; it wasn't -- you couldn't see down the street and make out somebody that you would recognize as a friend.

Q Uh-huh?

A You could make out figures, as I said, all the street lights were shot out.

Q This was at the time you had observed these men in the street, when you had returned to the scene, is that

correct?

A That is right.

MR. CORRIGAN: Nothing further of  
this witness.

CROSS-EXAMINATION

BY MR. FLEMING:

Q If it please the Court. Patrolman Sweeney, can you tell the Court and jury the distinction between a stationary surveillance and a moving surveillance?

A Yes, a stationary surveillance is where you would be in one spot and observing one object or -- a moving surveillance would be that you would patrol the area and keep going by your object.

Q And what is the purpose of a moving surveillance as distinguished from a stationary surveillance?

A Well, a stationary surveillance, you would be observing the house or whatever your object is, and report all events while you are on the scene.

A moving surveillance is more or less, would be a special attention, where you would go by it every once in a while, and you're keeping an eye on something.

Q And another purpose would be so that, as you make your surveillance, in a moving surveillance, that you are not observed as you make it, isn't that correct?

A Not necessarily, no.

Q But usually?

A Probably.

Q Now, when you were first sent out to this scene at about 6:00 o'clock, what kind of weapons did you have, other than the shotgun?

A In our car?

Q Yes.

A Well, on our person we had our service revolvers, .38 specials.

Q Any other weapons?

A No.

Q Any tear gas?

A No, not in that car.

Q Not in that car, any other kind of weapons at all?

A No.

Q I take it, from your answer, that at some point you did obtain some tear gas?

A (Witness nods.)

Q Is that correct?

A Right.

Q About what time was that?

A This was when we went down to 108th and Superior.

Q And that was at about 7:00 o'clock?

A 108th and Superior?

Q Yes.

A No.

Q When did you leave the area -- the first time you were there was about 6:15?

A 6:15, we left the first time and returned at 7:12, 7:10 or 7:12.

Q You left again?

A At 8:20.

Q And you went to 108th and Superior?

A Yes.

Q That's where you obtained the tear gas?

A Right.

Q Prior to the time that you heard the shot, as you were proceeding down Auburndale toward Euclid, did you hear any shots at all before that?

A Before we were going down Auburndale?

Q Yes.

A No.

Q I believe you told us that nobody ever told you the reason for the surveillance of this building?

A Oh, yes, they did.

Q You were told why you were to watch this building?

A Yes.

Q But you weren't given any names of any people, I believe you testified?

A No. Right.

Q But you were given a reason for watching the building?

A Yes.

Q Now, as you were going down Euclid, you didn't have any reason to believe that there was any violence behind you, other than this automobile that -- where the man was leaning out with a gun and fired at you? Is that

correct?

A Going down Auburndale, we had.

Q Yes, as you were going down Auburndale?

A Auburndale, right; but on Euclid, we were already--

Q And this person, whoever it was that was in this automobile, was following you?

A Right.

Q There were two people in that car?

A Two or three males in that car.

Q And three officers in your car?

A Right.

Q Was there any reason why you didn't stop and try to apprehend this person that fired the shot at you?

A Well, at the time before the shot was fired, there was no crime committed.

Q But after he fired the shot, there was a crime committed, wasn't there?

A Right, and I broadcast the fact that we were shot at.

Q Yes, but I mean, you are a police officer --

A Right.

Q -- somebody fired a shot at you, and you and three other officers were in the car, and you had a shotgun in your car, why didn't you try to apprehend these people?

A We were ordered to leave the area.

I broadcast on the high-band radio that we were shot at, and they said, "Leave the area."

Q I am talking about prior to getting on the radio, somebody shot at you and you were a police officer, somebody is committing a crime; why didn't you --

A I got on the radio as we were shot at.

Q Immediately after you were shot at?

A Yes.

Q Before you tried to get the shotgun?

A I was trying to do both at the same time.

Q Now, did you make -- now, you say this automobile -- was it apparent to you, or could you tell whether any other automobiles were behind the automobile you observed?

Did you see any other cars behind?

A No, I didn't.

Q I believe you indicated that this automobile was somewhere in this area. Do you know about what address it was, up on Auburndale, where you were at the time?

A It was, I believe it was before the bridge trestle crossing Auburndale.

Q So that's almost to Euclid?

A Right.

Q Then this automobile then turned around in the middle of the street?



A Right. Went up on the curb and turned, and went onto the other curb.

Q And you could have apprehended these people at that point?

A Not at that point.

Q Well, you had your weapon? They had a shotgun, but you had --

A At that point we were going one direction, and they turned around and were going another direction.

Q Well, you could have turned around, couldn't you?

A Sure.

Q Now, when you went to get the tear gas, did you get any other weapons other than the one shotgun that you had, and the sidearms?

A At 108th and Superior, let's see, Zone Car 405 teamed up and our car. They brought their shotgun along, and their .38, and Sergeant White had a .38.

Q Did you have anything when you left to go back that evening, did you have anything other than shotguns?

A No.

Q In your car?

A No.

Q Did you see any other officers out there who had any high-velocity weapons other than shotguns?

A None.

Q How long were you on the scene the last time you went back?

A Until about 1:30 in the morning.

Q And what time was it that you went back, the time you formed the human line and all this, about what time was it when you arrived back?

A Left at 8:20 and went over to 102th and Superior, and I will be honest, I lost all track of time from that point on.

Q About 8:00 or 9:00 o'clock, about 8:30 or 9:00 o'clock?

A That I returned?

Q That you returned.

A It would be closer to 9:00 o'clock.

Q Okay, and you were there from 9:00 to 1:30, and you saw a number of police officers on the scene? Right?

A Right.

Q About how many officers would you say you observed on this general scene, where all this activity was going on?

A At Auburndale and Lakeview, I would say probably thirty-five or fifty.

Q And did you observe any plainclothes officers on the scene?

A Yes.

Q About how many plainclothes officers were on the scene?

A I would say about five from our outfit.

Q Did you observe any of these plainclothes officers with high-velocity weapons?

A No, sir.

Q During the period of time that you were out there, did you see any submachine guns?

A No, sir.

Q Did you see any -- you didn't see any officers with their own personal, high-velocity weapons?

A No, sir.

Q Now, what were you carrying at the time you returned to the scene and after you got out of your car?

A I had a shotgun.

Q At any time, while you had the shotgun, did you go into the Lakeview Tavern?

A Into it?

Q Into it?

A No.

Q Did you see any police officers go into it?

A Yes, I did.

Q About how many did you observe going into that tavern?

A Just a couple. I wasn't standing in front of the place; I did see one or two go into the place.

Q Do you know whether any police or any civilians were shot in that tavern?

A Not a civilian, no.

Q Do you know whether anybody was shot in that tavern?

A Yes, I do.

Q Police officer?

A Right.

Q But you don't know any civilians that were shot in there?

A No.

Q About what time was it, when you observed the police officers going into the Lakeview Tavern?

A I have no idea what time it was.

Q How long was it about? About how long was it after you had arrived on the scene the third time?

A About a half hour or 45 minutes, when they went into the tavern.

Q How many was it that you said went into the tavern?

A About three or four went in.

Q Did those officers have shotguns?

A This, I don't know; I don't remember.

Q You don't recall?

A I don't recall.

Q You don't recall, either, whether or not any of those officers had their own personal, high-velocity weapons?

A I didn't see no weapons at all.

Q How long after they went in there was it that you found that anybody had been shot?

A About five minutes later.

Q Now, when Mr. Corrigan asked you whether you fired a shot as you were going down Auburndale, after this person shot at you, you said "Not then;" so I take it from that, that you did fire your gun?

A Right.

Q Now, about what time was it that you first fired your gun?

A When I returned to Auburndale and Lakeview, we had two street lights, directly -- one in front of the tavern and one in front of the first apartment or directly behind the tavern, street lights, and I shot both of those out.

Q Did you fire at any people while you were out there?

A Not in that area, no.

Q Well, after you fired the street lights out, when was the next time you fired your gun? When you fired

your gun did you fire a shotgun?

A No -- the shotgun.

Q The shotgun?

A The shotgun.

Q You had a 30 aught zero in the shell?

A No, a 12-gauge shotgun, with Double O buck.

Q Double O buck?

A Right.

Q 12-gauge?

A Right.

Q And that is the kind that has the 32 shells in it?

A This, I don't know.

Q You don't know?

A No.

Q Okay, now when was it that you fired at some people?

A This was approximately 2:00, 2:30 in the morning,  
at 105th and St. Clair.

Q You mean after you left this area?

A Yes, we were out of the area altogether.

Q While you were in the area, and during the activities that you were concerned with in this general area, did you fire your gun?

A No, sir.

Q At any buildings?

A No, sir.

Q At any people?

A No, sir.

Q The only time you fired your gun, when you were in this area, was at the lights?

A (Witness nods).

Q Did anybody instruct you to fire your gun at the light?

A No, sir.

Q All right, now I believe you further indicated that you formed a human chain in this area (indicating), that you formed a human chain in front of the Lakeview Tavern?

A Right.

Q In an effort to try to get to this building and also to get these wounded people out of the area, is that correct?

A Right.

Q Was this before or after the police had gone into the Lakeview Tavern?

A This was before.

Q Before they went into the tavern?

A (Witness nods.)

Q And I believe that you said that in this general vicinity, just in the direction of 12312, but not in front of it, was where a Negro body was found that you later found to be James Chapman?

A It was still in front of the tavern itself.

Q It was in front of the tavern?

A Right before the driveway.

Q I believe you indicated in your testimony, that you found this person to be James Chapman?

A Right.

Q Was this person expired at the time you saw him, was he dead?

A In my opinion, I thought he was, but I had no idea if he was or not.

Q But you helped to move this person from the area?

A Right.

Q Were there any other bodies, other than James Chapman's body, in the general vicinity at the time you moved that body?

A Yes, there was.

Q Whose body was that?

A This, I don't know, there were bodies still in front of us.

Q Everybody else's body you saw was the police officers' body?

A Right.

Q Were any of them expired?

A This, I have no idea.

Q Well, from your observations, did all these parties



appear to be dead?

A No.

Q Now, do you know the names of the police officers that you saw at this location?

A Well, Patrolman Wolff was one, and Sergeant Levy and Ernie Rowell.

Q I believe you told us that when you first came on the scene, Sergeant Levy and Ernie Rowell were under an abandoned or disabled automobile at this position (indicating)?

A On Auburndale.

Q On Auburndale, right here?

A Right.

Q Now, you didn't have to form a human chain to get those people out, did you?

A No.

Q As a matter of fact, you obtained Sergeant Levy, and neither one of those parties were dead, were they?

A No.

Q You obtained -- you were able to retrieve their bodies and send them to the hospital before you formed this chain, weren't you?

A Right.

Q Now, is it my understanding that you retrieved the body of Patrolman Wolff and James Chapman simultaneously

and some other officers?

A No, sir.

Q Well, I believe you told us there were three or two officers here in this location --

A Wounded officers.

Q Wounded officers?

A Two.

Q Two wounded officers and James Chapman?

A Right.

Q Patrolman Wolff was one of those officers?

A Right.

Q And you don't know who the other officer was?

A I learned it to be Lieutenant Jones.

Q And Lieutenant Jones was one of those officers at the same time you found the body of James Chapman?

A Farther up.

Q How much farther up?

A In front of 12312 Auburndale.

Q Will you step down here for a moment, please?

Now, James Chapman -- will you point out for the Court and jury -- step back and watch those guns; don't trip. Do you want to stand on this side?

Now point out the spot for the jury and the Court where James Chapman's body was found.

A (Witness indicates).

Q Will you describe for the record just about where that location is?

A Well, it's on Auburndale, direct -- on the corner.

Q Right in front of the tavern?

A Right, this is the front door of the tavern, and directly next to it, still in front of the tavern itself.

Q Okay, now the next body, going back towards 12312, whose body was that?

A This, I don't know; it was a body lying on the sidewalk. After I brought him back here, somebody else went up here, whom I don't know.

I put Chapman on a stretcher and they took him to the hospital, and I didn't go back here. The reason I know one was Wolff, I seen him being put on a stretcher and Lieutenant Jones.

Q It was my understanding that the police officers formed a chain, and that as you formed this chain, that you passed a body back, from one officer to the other, and then the last officer put the body in the ambulance.

You retrieved the body of Chapman on your own, then?

A Right, Chapman was -- I found Chapman lying here (indicating).

Q Yes.

A When I brought him back, I did not go back to --

Q To the chain?

A To assist these others.

Q To the chain itself?

A Right.

Q Can you tell us where Lieutenant Jones' body was found?

A That, I can't, because I didn't recognize him laying down there. I recognized him when he was put on the stretcher and put in the ambulance.

Q Thank you; you may resume the stand.

Do you have any idea about what time it was when these -- when they formed this chain and when you found the body of James Chapman?

A No, I don't.

Q Well, let's see --

A Approximately forty-five minutes after I arrived back on the scene.

Q So you say that was about 9:45, I believe you told us?

A Yes, approximately, yes.

Q Now, then, it was shortly after these events that over the radio came a message that somebody wanted to surrender?

A Right.

Q Now, how did you happen to find out this was coming over the radio? Did someone come from your car and tell you, or did you happen to be back to your police car?

A I was in the police car. We had it parked on the corner, on Lakeview, on the corner, by the white front of the tavern there on Lakeview and --

Q So then, I take it, that after you put Chapman in the ambulance, you went back to your car for some reason?

A Right.

Q And at the time you put Chapman in the ambulance, that you ascertained that was James Chapman?

Q Did he have some identification on him?

A No, I didn't.

Q When you went back to your car, did anyone else go back there with you?

A No.

Q Was anyone in the car?

A No.

Q Then you were the person who obtained this information at this location, that someone wanted to surrender?

A Right.

Q Can you tell us who it was that was on the other end of the radio, giving you this information?

A No, I don't know.

Q It was just a radio dispatcher?

A Right.

Q After you received the information, about how long was it after you put Chapman's body in the car?

A Chapman's body wasn't put in our car.

Q I mean the ambulance.

A Chapman's body -- he was already on the way to the hospital when that radio assignment came in.

Q About what time was that?

A I said I lost all track of time when we left 108th and Superior.

Q You said it was about 9:45 when you placed Chapman's body in the ambulance, or on the stretcher, and you went directly back to your car?

A Right.

Q So, would it be fair to say it was about a quarter

to 10:00?

A I said it was about 45 minutes after I arrived back on the scene that we --

Q That you received this information?

A That we got the bodies out.

Q That you got the bodies out?

A Yes.

THE COURT: Mr. Fleming,  
we will take our morning recess at this time.

Ladies and gentlemen, don't talk to anybody  
and don't let anybody talk to you while you are out  
of the courtroom.

(Thereupon a recess was had.)

- - -

Q Officer, did you make a written statement reporting the events that you observed and that you took part in on July 23rd?

A I made a report, right.

Q And had you reviewed that report?

A Not recently, no.

Q When was the last time you saw it?

A I believe the later part of August, somewhere in there.

Q Did you review that report at the recess?

A No, I didn't.

Q Did you talk to anybody about this at the recess?

A No, sir.

Q Now, I believe you indicated that you -- you heard this radio report that a Black Nationalist wanted to surrender to two negro policemen? Is that correct?

A No, it isn't. Just said they had a male that wanted to surrender.

Q A male wanted to surrender?

A Right.

Q To two negro policemen?

A Right.

Q I believe you indicated in your direct testimony that you found a negro officer and proceeded in an effort to try to find another one; is that correct?



A I got a hold of my superior officer and then he went in the car and got the orders about their request that someone wanted to surrender, and at the time, around our car we only had one colored policeman.

Q You said -- what did you say?

You did what?

A When they requested an officer, so I got Sergeant White, who got the information and was going down to the house.

Q I just wanted to understand you correctly. My understanding is, that, before the recess, you told me that you left the body of James Chapman at this location (indicating), on a cot or a stretcher; that you then proceeded to your police car that was a little further back towards Euclid (indicating); that no one was in the car, and that you heard a radio message and that you didn't know who was on the other end; that it was a radio dispatcher and that dispatcher told you that a male wanted to surrender to two negro officers?

Is that correct?

A No, it isn't.

Q You didn't say that?

A Our car was on the corner of --on Lakeview, right at Auburndale. Chapman was already in the car and on the way to the hospital.

Q But didn't you tell us that you heard the radio conversation from a radio dispatcher?

A No. They requested an officer.

Q No. My question is this: Didn't you tell us this morning that you heard a radio conversation from a dispatcher, whose name you did not know, and that this message was that a male wanted to surrender, and you don't know where the location was, now, you don't remember, that he wanted to surrender to two negro officers?

A Right.

Q Now, after you heard that communication, then you went to obtain Sergeant White, is that correct?

A No. He was there.

Q He was in the car?

A No. He was there. He's the one -- they requested an officer. I got Sergeant White.

Then they gave the information on the radio, I was there and I heard it.

Q Okay. What happened after that?

A We attempted to go up to -- on Lakeview, up towards where the address was. He had the address.

He told me to get two colored policemen. I had one. He came back and he had the address, somebody wanted to give somebody up.

Q Where did you go to get the negro police officer?

A He was standing right on the corner.

Q What was his name?

A Patrolman Burton.

Q Patrolman Burton?

A Yes.

Q Do you know his first name?

A Thomas.

Q Thomas Burton. Did the three of you proceed in this direction (indicating)?

A Right.

Q Trying to get to the address?

Well, before that, you tried to get another negro officer, didn't you?

A Yes.

Q Where did you go in an effort to get the other officer?

A We started to move north on Lakeview.

Q In this direction (indicating)?

A Right.

Q Okay. How far did you go?

A We got down to about where those burned-out houses are (indicating).

Q To about 1395 (indicating)?

A Right.

Q Did you observe any officers in this location at

that time?

A Yes, I did.

Q About how many?

A I have no idea. They was behind all parked cars and trees.

Q Was this building burned out at that time (indicating)?

A No, it wasn't.

Q As you proceeded here (indicating) and as you looked for this officer, did you convey the message to any of these other officers here (indicating) that there was someone that wanted to surrender?

A No, I didn't.

Q Was that message that some -- the someone, the male -- did it indicate who the male was?

A No.

Q Now, getting away from this for a moment, I believe that you indicated that you were in this position (indicating) and that you were observing 12312?

A Right.

Q And I believe Patrolman Gallagher and a Patrolman O'Malley were with you?

A Right.

Q Now, Patrolman O'Malley testified that he observed about ten or twelve people on this porch (indicating),

and there were men and women.

Your testimony was that you saw some ten or twelve men up there; you didn't see any women up there?

A Not on the porch.

We could observe the sidewalk, the gate, and part of the driveway.

Q Well, now, I believe it was brought out in your testimony, and Patrolman O'Malley, that you had binoculars and other assistance in an effort to observe over here (indicating)?

A Yes.

Q Did you use the binoculars when you looked over here (indicating)?

A A couple of times.

Q You never saw any women?

A Pardon?

Q You never saw any women or children up there?

A Children. There was some women walking in the neighborhood.

Q I'm talking about on the porch upstairs at 12312?

A No, I could not see upstairs or on the porch.

Q You couldn't see that?

A No, I couldn't.

Q So you didn't see any men or women or children upstairs?

A No.

Q I see. All you saw then, I believe, and you testified that it was about 6:00 o'clock when you were in this position (indicating), that you saw a number of men congregated in front of 12312?

A Right.

Q You saw that at 6:00 o'clock in the evening?

A Right.

Q Now, as you approached this area where you said there was heavy gunfire (indicating), were you pinned down here?

A Right.

Q Were there any other officers further north?

A This I couldn't tell.

Q Well, you were in radio communication with other officers, weren't you?

A When I was on -- when I was at Auburndale and Lakeview, I was -- not with the other officers, with radio.

Q All these cars had radios in them, didn't they?

A There were nobody in them, though.

Q There were walkie-talkies in the area, weren't there?

A Not that I seen.

Q You didn't see any police officers with walkie-talkies?

A No, I didn't.

Q Did you or Sergeant White or Patrolman Burton make any effort as you were pinned down to communicate the message that you received that there was someone -- do you recall whether or not it was 1384?

A I don't know what the address was.

Q It was on Lakeview, wasn't it?

A Right.

Q Did you make any effort to communicate to any officers over in this direction (indicating) that there was a person here (indicating) that wanted to surrender?

A No.

Q You did not?

A I did not.

Q Did Sergeant White?

A I have no idea.

Q You were in the car with him?

A We weren't in the car. We walked down there. We were pinned down by sniper fire. I went back to Auburndale and Lakeview. They continued -- I presume they were going to go to the address.

Q In other words, the three of you left your car here (indicating) then?

A Right.

Q You didn't drive down?

A Didn't drive down.

Q And you and Sergeant White and Patrolman Burton walked together down here (indicating)?

A Yes.

Q Wasn't there an abandoned police car in this location (indicating)?

A There were several abandoned police cars in the area.

Q And how far did you go along with them before you turned around and came back?

A To that first -- the first house that is burned out.

Q 1385 (indicating)?

A Right on this side of the street.

Q You left Patrolman Burton and Sergeant White here in



this location (indicating)?

A In that location.

Q Then when you came back here (indicating), did you convey the message to any of the officers in this location at Auburndale and Lakeview (indicating)?

A No.

Q What did you do?

A I went back there and I stayed on the corner.

Q Were there other officers here in this location (indicating)?

A Yes, there was.

Q There were officers here in this location (indicating)?

A Right.

Q Was it after this that you observed the police go in Lakeview Tavern?

A That I couldn't tell you, if it was before or after.

Q Did you have any knowledge of why the police entered this place at that time (indicating)?

A Yes, I did.

Q What happened?

A Originally I heard they were going to go up and attempt to get a better position upstairs of the tavern to the house next to it.

Q When you heard somebody was shot in the Lakeview Tavern, was it your understanding that they were shot from

a bullet that came from outside the tavern or that somebody was shot inside this place?

A Shot from outside in.

Q Did it ever come to your attention that there were a number of civilians in this place?

A Later on, right.

Q And did you discover, as a matter of fact, that someone was shot inside the building?

A A civilian?

Q Yes.

A No, not civilians were shot inside the building.

Q I beg your pardon?

A I said no civilian was shot inside the building.

Q As far as you know?

A As far as I know.

Q I believe you indicated that you did make a statement with regard to your activities. I'd like to have an in camera inspection of that statement.

MR. CORRIGAN: We have the statement downstairs.

THE COURT: Do you have another witness?

MR. CORRIGAN: Beg pardon?

THE COURT: Do you have another witness?

MR. LAURIE: Yes, sir.

MR. CORRIGAN: Yes, sir.

THE COURT: Well, will you make the statement available as soon as we recess for lunch?

MR. CORRIGAN: Yes.

THE COURT: Officer, it will be necessary that you be available again at 1:15.

MR. FLEMING: Nothing further at this time.

THE COURT: We will excuse you at this time.

(Witness excused.)

MR. LAURIE: Patrolman Thomas Horgan.

- - -

Thereupon, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness THOMAS EDWARD HORGAN, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q Your full name, sir?

A Thomas Edward Horgan.

Q How do you spell your last name?

A H-o-r-g-a-n.

Q Your employment?

A Patrolman, City of Cleveland.

Q How long?

A Fifteen and a half years.

Q And presently you are assigned to what particular unit or department?

A Tactical Unit.

Q Pardon?

A At the present time with the Tactical Unit.

Q What does that consist of?

A It's a unit consisting of about 75 men. We are city-wide. We work different districts. We have heavy

equipment in the car.

Q Heavy equipment? What do you mean, heavy equipment?

A 30.06 carbines, shotguns, tear gas.

Q And directing your attention to the date of July 23rd, 1968, were you working on the task force then?

A At that time it was called the "task force."

The unit has been reformed.

Q Who were you working with?

A My partner was Patrolman Gerrity.

Q And did you have an assignment?

A Yes, sir.

Q What time did you receive that assignment?

A On the 23rd of July. I reported for roll call at 5:00 o'clock in the evening. My immediate superior officer was Lieutenant Schempp. At this time he assigned two of our cars to go to 12312 Auburndale to put a house under surveillance.

Q And did he give you a reason for this assignment?

A We were informed that --

MR. FLEMING:

Objection.

THE COURT:

The answer is,

you did get an assignment? Yes or no.

THE WITNESS:

Yes.

Q Pursuant to that assignment, and the reason therefor, where did you go, if anywhere?

A We proceeded to the area. We checked the house.

Q What house?

A The house at 12312 Auburndale.

Then we tried to assume positions where we could place the house under observation.

Q When you say you checked the house, what do you mean you checked the house?

A We drove through the neighborhood, looked to familiarize ourselves with the house.

Q Then you took a position where?

A I was in 966. I took up a position on the southwest corner of Lakeview and Moulton.

Q Is this as per orders?

A Well, you take up the best position you can on a stake-out.

Q Well, you took a position for a stake-out as per orders?

A Yes, sir.

Q You found yourself then stopping where?

A On the southwest corner of Lakeview and Moulton.

Q What car number did you have?

A 966.

Q And who was with you in the car?

A Patrolman Gerrity.

Q What other equipment did you have with you to make this

surveillance?

A We had a pair of binoculars. We had a high-band radio and a low-band radio.

Q What did you have with you by way of, at this particular day, by way of weapons, if any?

A Well, at this time we just carried the regular 12-gauge shotgun and our service revolvers.

Q All right, and how many shotguns were there in this car?

A One.

Q And when you say your "service revolver," is this your sidearm?

A Yes, sir, that is a .38 Smith and Wesson.

Q About what time did you take your position at Moulton and Lakeview?

A We arrived there in the area about 6:10.

After driving around, trying to find a good position where we could observe this house, we got into position about 6:25.

Q 6:25 p.m.?

A Yes, sir.

Q 23rd of July?

A Yes, sir.

Q 1968?

A Yes.

Q This area you referred to, is this in the City of Cleveland?

A Yes, sir.

Q County of Cuyahoga?

A Yes, sir.

Q State of Ohio?

A Yes, sir.

Q Now, Lakeview and Auburndale - is Auburndale in the City of Cleveland, Cuyahoga County?

A Yes, sir.

Q How about this address, 12312, is that in this county, Cuyahoga County?

A Yes, sir.

Q And when you positioned yourself, were you positioned facing -- what direction?

A I was facing an easterly direction.

Q That is facing Lakeview and toward the house?

A Yes, sir.

Q And who was in the driver's seat?

A Gerrity was driving.

Q And you were a passenger?

A Yes, sir.

Q All right. Now, at the particular time, can you describe what you observed in and about the 12312 location?

A Well, when we got there, there was some women and men



sitting on the front porch. There were children playing.

Q Describe these people.

A They were colored males and females, young children.

Q Dressed?

A Standard dress.

Q All right, proceed. How many?

A Well, roughly about ten, I'd say.

Q Then what further observations did you make, if any?

A Well, we were there a while. We noticed quite a bit of vehicular traffic coming up and down the street, colored males going in and out.

Q Of where?

A At the address 12312.

Q Describe the vehicles, if you can, by description, if you can, or whatever, and the people, if you can, that came out of this address and to this address from these vehicles?

A The way we set up, the other car was a three-man car.

Q Where was that set, if you know?

A That was parked on Auburndale, close to 124th, facing west.

Q Is this a task force car, too?

A Yes, sir.

Q Was this prearranged?

A Yes, sir.

Q Continue.

A They were in a better position to observe who went in and out of the house. We could see where the cars were turning.

By the high-band radio, we had communication between the two cars.

Q The two task cars?

A Yes, sir. I would spot the cars as they come down Lakeview. If they made a left going up Auburndale, I called Patrolman Sweeney's attention to it.

If the car stopped and anybody got out, they took the license number and tried to identify the people.

As I said, their car was a three-man car, so they kept a list. They kept the description and the people that went in and out of the house.

Q In other words, you worked in conjunction with them to obtain this information?

A Yes, sir.

Q I take it from your testimony, they took this --

A Yes, sir.

Q Can you describe whatever you saw, as far as this is concerned?

A Well, with the aid of the binoculars, I noticed quite a few of Black Nationalists, in their attire, going in and out.

Q Describe them, if you can.

A They wear their hats, and they all have beards.

They have this green and red smock they wear.

Q And did you notice any car in particular that you recognized?

A A red Volkswagon pulled up --

Q Pardon?

A A red Volkswagon.

Q What other identification, item of identification did you observe on this car, other than a red Volkswagon?

A Patrolman Sweeney had his glasses trained on the car. I saw the car go by, but I didn't recognize the occupant. Patrolman Sweeney saw Evans got out of the car --

MR. FLEMING:

Objection.

THE COURT:

Is this something

he said at that time? Did he announce that on the radio?

THE WITNESS:

He broadcast that to me.

THE COURT:

Overruled.

Q Continue.

A Patrolman Sweeney called my attention to this car.

I trained my binoculars on the party that came out.

I identified him as Evans.

Q You had seen him before?

A I had previous occasion of seeing him.

Q Is he in the courtroom today?

A Yes, sir.

Q Will you identify him?

A (Witness indicates.) The man in the red.

Q One, two, or three, at that table?

A Going from which side?

Q Well, counting from the front, closest to you.

A Number 3.

MR. LAURIE:

Number 3.

May the record show that the witness is identifying  
Mr. Evans in this case --

THE COURT:

It may so show.

MR. LAURIE:

-- as coming out

of the Volkswagon.

Q Who if anybody else came out of the Volkswagon with  
him?

A There were other people there, but I didn't recog-  
nize them.

Q Did you notice whether they carried anything in with them at this time?

MR. TOLLIVER: Objection to the form of the question.

THE COURT: Overruled.

A They had something wrapped up, but I don't know what it was.

Q Can you describe this item that was wrapped up, to the best of your knowledge?

A Describe? It was long.

Q Describe the physical appearance.

A It was long and what was in there, I couldn't tell.

Q All right. Do you recall what it was wrapped up in or couldn't you see?

A I couldn't see from --

Q All right. How many got out of this car?

A Well, they had already gotten out when Sweeney called my attention to it.

Q About how many were near this car?

A I would say there were three standing by this car.

Q Where did they go?

A They proceeded to the driveway located at 12312 Auburndale and they went in the driveway.

Q About what time was this car stopped there and the people got out?

A Roughly between 8:00 and 8:10.

Q Did you see any other persons or cars that you recognized that came up after that?

A No, sir.

Q And were there other cars, though, that did stop?

A There was quite a bit of traffic there.

Q And people went in?

A Yes, sir.

Q After observing Mr. Evans go in 12312 driveway, what next did you observe, if anything?

A About 10 minutes or 15 minutes after that, a colored male come out, about 18 to 20 years old. He was dressed in the African garb. He had a bandoleer, a carbine-type weapon and a pouch of ammunition.

This male walked to the driveway and he, more or less, stood like a guard and looked up and down the street.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A He looked up and down the street. Again Sweeney called my attention to him. We put the glasses on him.

I said, "Well, it looks like a weapon."

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A I said, "It looks like a weapon, but don't make any moves."

About that time, about 15 to 20 Black Nationalists in their attire came running out of the driveway.

Q Of 12312?

A Yes, sir. At this time I had the glasses trained on the driveway. The only party that I really could pick out was Evans. He was in the group.

Q Describe what they were wearing, if anything, other than their Black Nationalist garb?

A Well, some of them had dungarees on.

Q Besides clothing, did they have anything else?

A Yes, sir. They were all armed.

Q Armed with what, as far as you could see?

A Yes, sir.

Q Describe that.

A They had bandoleers. What I could see mostly were carbines and they all had bandoleers. They got out on the sidewalk.

Then they went from the --

Q In the position of Mr. Evans, where were these other men, if you could see?

A Well, they were around him, but they broke up and --

Q Describe how they broke up then after they were around Mr. Evans?

A Some stayed on the south side of the street. Some went to the north side of the street. Then they started

going up Auburndale.

Q You mean east?

A They would be going east towards --

Q Any of them coming south on Auburndale towards you?

A Yes, a couple of them started running across Lakeview.

Q In your direction?

A They would be going west, yes, sir.

Q After you made this observation, did you have any contact on the high-band with the other task force?

A Patrolman Sweeney said we'd better pull out.

MR. TOLLIVER: Objection to this conversation.

THE COURT: Overruled.

A Patrolman Sweeney said, "You had better pull out. They are flanking us."

At that time, we put the car in gear. We drove to Lakeview. We made a left on Lakeview. That would take us north towards Superior.

Q As you made a turn, making a turn left on Lakeview going north on Lakeview, did you observe who was behind you?

A There was supposed to be a Black Nationalist car, Chevy, green.

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Gentlemen, when



you say "supposed" --

Q Just describe what you saw.

A Sweeney told me --

MR. FLEMING: Objection.

THE COURT: This is the radio communication?

THE WITNESS: Yes.

THE COURT: Overruled.

A When Sweeney seen these people, he observed this car and he said, "Watch that green Chevy." He said, "I think they have weapons in it.

MR. FLEMING: Objection.

MR. TOLLIVER: Objection to this, Judge.

THE COURT: Overruled.

Q Continue.

A So this Chevy, when we made our left-hand turn on Lakeview, the Chevy was behind us. I heard shots, but our car didn't receive any hits.

Q What type of fire did you recognize it to be, if you did?

MR. FLEMING: Objection.

A I couldn't recognize it. It was just rapid.

THE COURT: Overruled.

MR. FLEMING: Withdraw the objection.

Q After making this observation and hearing these shots, what did you do then?

A We made broadcasts on the low-band to alert the other cars coming in what the situation was. We got to Superior --

Q What information did you impart to the band?

A Over the low-band we said, "The men are armed and they are shooting. Use caution when approaching."

Q On the high-band --

A On the high-band --

MR. TOLLIVER: Note our continuing objection to all this conversation.

THE COURT: Yes, you may have your objection to this conversation.

A On the high-band, we more or less gave our office the same information, stating that 966 -- or 961 went towards Euclid and we were proceeding on Superior.

Q That high-band was connected with who or what department?

A Well, we call it our office. It's also connected too with the regular radio communication.

Q All right. And when -- how far on Lakeview did you get until the next thing happened, if, indeed, it happened?

A Well, I had already gone north on Lakeview and we made a left on Superior. Then we would be heading west

on Superior.

As we went by approximately 120th and Superior, we heard rapid fire.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A We heard rapid fire and over the low-band, we heard the tow truck officer -- or the tow truck driver saying they were shooting at him on Beulah.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A By the time he made his broadcast, we heard the shots. We were about at 118th and Superior.

Q Can you fix about the time that this announcement came that the tow man was being shot at?

A I would say between 8:30 and 8:35.

Q All right. And then, after hearing this announcement what, if anything, did you do and your partner do?

A We broadcast it on both radios that we were going over to assist the tow truck driver.

Q Did you turn around and come back, sir?

A We -- no, we made a left again on about 118th. That would take us south.

Q South to where?

A South to Superior.

Q And then what street?

A We went in a hurry to get there. We passed the street, Beulah, so we took Moulton. We came down Moulton to 123rd.

Q Wait a while. You were coming down what street when you passed Beulah?

A We were on about 118th.

Q 118th and what?

A Well, 118th off --

Q Does 118th run north and south?

A Yes, sir.

Q Does Beulah intersect at 118th?

A I believe it does.

Q When you got to Beulah, what did you make, a left turn?

A Like I said, we overshot it, so we took the next street. That would be the next street south; that would be Moulton.

We come down Moulton to 123rd.

Q That is going east?

A Yes.

Q Now, this is the same street you had parked on earlier up in the corner of Lakeview?

A Yes, sir.

Q Now, you are going east -- you are going east on Moulton and to what -- how far did you get before another

move was made?

A Well, then we turned north again on 123rd.

Q 123rd?

A And Moulton.

Q And Moulton. Now, you are going in the northerly direction on 123rd, is that right?

A Yes, sir, towards Beulah.

Q As you made this turn, what, if any observations, did you make on 123rd and Moulton, if any?

A No, it would be 123rd and Beulah that I saw the tow truck.

Q You did eventually get to 123rd and Beulah?

A I stopped halfway down the street when I heard the shots.

Q Before you got to Beulah?

A I didn't get all the way to the corner, no, sir.

Q Now, we'll take up the map. If you will, sir, you want to step down here?

(The witness left the stand and went to the map.)

Q Stand where I am standing here, sir, so the jury can see you, sir, if you will, sir.

Now, you say you were going up 123rd from Moulton, which is this street here (indicating). Incidentally, you were parked 100 -- Lakeview and Moulton originally

(indicating)?

A Originally.

Q Your testimony just left off, you said you were going up Moulton east, made a turn on 123rd. How far did you get before you stopped on 123rd before you got to Beulah?

A I would say about three or four houses down (indicating).

Q You want to step back a little so Mr. Fleming can see?

(The witness complied.)

Q About three or four houses south of Beulah?

A Yes, sir.

Q Then did you park your car there or stop the car?

A We stopped the car in the street.

Q What caused you to stop the car there?

A Because approximately here (indicating) on the corner, the tow truck driver was here (indicating).

The tow truck was here (indicating).

Q Did you hear anything before you stopped the car?

A The reason we stopped, we heard shots.

Q What kind of shots did you hear before you stopped the car three houses south of Beulah and 123rd?

A Rapid fire.

Q Then after you heard this, you got out of the car,

you and your partner?

A I got out and stood by the car on the curb. My partner opened up the door and stood by the door.

Q What did you observe then?

A At this point, we saw one of the tow truck drivers, he had his hands up in the air and he was more or less pleading -- I couldn't hear the words, but from his actions, he had his hands up like "don't shoot me."

Q What direction was he looking at?

A He was facing Lakeview.

Q He was facing Lakeview. That would be east and on Beulah. He had his hands up in the air (indicating)?

A Yes, sir.

Q And expressing whatever you described?

A Yes, sir.

Q Was he in uniform?

A Yes, sir.

Q What type of uniform was he in?

A He had blue trousers on and a summer shirt on, short sleeves and a hat.

Q What about badges or whatever?

A They wear badges and a patch.

Q Tell us whether or not was he a member of the Cleveland Police Department, tow truck department?

A Yes, sir, he was.

Q All right. And what was the lighting condition?  
Was it day or night at this time?

A It was good visibility, still daylight.

Q And I believe you said back here (indicating), it was about 8:30, 8:35 when you heard the announcement, is that right?

A Yes, sir.

Q How long did it take you to get here (indicating)?

A Three or four minutes.

Q You didn't waste any time getting here (indicating)?

A No, sir.

Q When you made this observation, tell us whether or not did you hear any more gunfire when he was pleading?

A I heard more fire and then he turned --

Q Stop here for a moment. What direction did you hear this fire coming from?

A I'd say it was coming from Lakeview.

Q And it would be east of the man?

A Yes, sir.

Q All right. And what type of fire was it?

A Rapid fire. ing.

Q Then what else did you either see or do then after you heard this plea and the firing sounds?

A Well, we observed the scene and then the tow truck driver turned and started running.



Q Which direction was he running?

A He was running west on Beulah then.

Q He was running west on Beulah?

A Yes, sir.

Q Did he go over the intersection or not?

A He was out in the street, and as I seen him running, he ran out of my view. The house blocked my view, but he was running west on Beulah.

Q From the position where you saw him, could you see the tow truck car, the position you were in?

A Yes, sir.

Q How far was Beulah -- from 123rd and Beulah, was this tow truck when you saw it?

A I'd say maybe 10, 15 feet.

Q Well, approximately on the map.

A (Indicating).

Q This is the intersection (indicating)?

A We were here (indicating). We could see the nose of the stakeout just about here (indicating).

Q All right. Beulah -- 123rd does make a little dogleg here (indicating)?

A Yes, sir.

Q So when you said he was running west on Beulah, was he still short of this dogleg when he got out of your sight?